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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,357	07/05/2000	Frederick Enns	10.018.043	5638
25582	7590	10/28/2004	EXAMINER	
LAWRENCE HARBIN MCINTYRE HARBIN & KING LLP 500 9TH STREET, S.E. WASHINGTON, DC 20003			PIZARRO, RICARDO M	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/610,357

Applicant(s)

ENNS ET AL.

Examiner

Ricardo Pizarro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/23/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-7,9,34,35,64-69 and 90-96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,34 and 90 is/are rejected.
- 7) ☒ Claim(s) 2,5,7,9,35 and 92-99 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claims 2-5, 6-7, 9, 64-69 are objected to because of the following informalities: and it is suggested to applicant:

In claim 2 line 21 insert +”a” before –second remote data processor-.

In claim 6 line 21 insert “a” before –second remote data processor-.

In claim 9 line 21 insert +”a” before –second remote data processor-.

In claim 64 line 2 replace the second occurrence of “a” with –the-, in line 11 delete “management”, in line 4 insert “at” before –at-.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 34 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moura in view of Ghaibeh.

US patent No. 5,586, 121 ( Moura et al) discloses an asymmetric hybrid access system and method comprising a communication system having independently scalable upstream and

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downstream paths that enable remote data processor devices( col 14 lines 47-53) to communicate with a server ( Server 72 in Fig. 4) , said system comprising: a common routing/switching backplane for providing intercommunication services among multiple communication devices including said server, an independent upstream controller (Upstream router 35 in Fig. 4 , col 8 lines 6-18) in communication with said backplane operating in accordance with an upstream protocol for receiving information packets from said remote data processor devices, said upstream controller including network operating algorithms for analyzing response packets transmitted by said downstream controller to determine operational status of a first identified remote data processor device, an independent downstream controller (Downstream router 34 in Fig. 4, col 8 lines 6-18) in communication with said backplane for transmitting data packets to said remote data processor devices in accordance with a downstream protocol, said independent downstream controller being operative to transmit control packets directed to a first identified remote data processor device that instructs said device to respond with predetermined information in accordance with said control packet, a network manager ( Hybrid system manager 71 in Fig. 4, col 8 lines 6-18 ) in communication with said independent upstream and downstream controllers through said backplane for effecting management of two-way communications between said first and 'second remote data processor devices and said server, as in claims 6, 34 and 90.

Moura did not specifically disclose said downstream controller applying forward error correction to control packets transmitted on said downstream paths, as in claim 6.

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US patent no. 5,936,338 discloses a protocol for data communication over a shared medium, comprising a downstream controller means applying forward error correction to packets transmitted on said downstream paths( col 6 lines 53-56), as in claims 6, 34 and 90.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to provide the FEC means as disclosed by Ghaibeh to the system disclosed by Moura with the motivation of obtaining a method for extending a high speed network to remote locations using an asymmetric hybrid access system.

***Allowable Subject Matter***

3. Claims 2-5 and 9 would be allowed if rewritten to overcome objection under 37 CFR

1.75.

Claims 7, 35 and 91-99 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

***Conclusion***

4. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9306

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(for formal communications intended for entry, for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to 220 South 20<sup>th</sup> Street, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Va 22202 (Customer Window).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Ricardo Pizarro** whose telephone number is (571) 272-3077. The examiner can normally be reached on Monday-Friday from 9:00 AM to 5:30 PM. The fax number for this Group is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kenneth Vanderpuye** can be reached on (571) 272-3078.

October 21, 2004

*Ricardo M. Pizarro*

